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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/443,158	11/18/1999	JAY S. WALKER	17200-020CT1	6852
54205 7590 07/11/2008 CHADBOURNE & PARKE LLP 30 ROCKEFELLER PLAZA NEW YORK, NY 10112			EXAMINER AL HASHEMI, SANA A	
			ART UNIT 2164	PAPER NUMBER
			MAIL DATE 07/11/2008	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 09/443,158	<b>Applicant(s)</b> WALKER ET AL.	
	<b>Examiner</b> Sana Al-Hashemi	<b>Art Unit</b> 2164	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 27 March 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 110-116, 118-127 and 129-131 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 110-116, 118-127 and 129-131 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

This action is issued in response to amendment filed 3/27/08.

Claims 1-97, 117, 128 were canceled. Claim 98-109, 132-139 were withdrawn. No Claims were added.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 110-116, 118-127, 129-131 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fisher et al. (Fisher hereinafter) (U.S. Patent 5,835,896) in view of Walker et al. (Walker hereinafter) US Patent No. 5,794,207 filed Sep. 4, 1996.

Regarding Claims 110, 123, Fisher at FIG. 1 illustrates a network of computers, each one of which includes storage devices storing programs and processors to execute those programs. FIG. 3 illustrates a bidding form (col. 7, lines 41-49). The completed bid form constitutes the conditional purchase offer, since the submission of a bid is a conditional offer to purchase a product, conditional upon agreement of the selling party. As seen in FIG. 3, the bid form includes an offer price ("Bid (price not to exceed)"). The bid form also includes a payment identifier ("Credit Card #") specifying a financial amount (the inherent credit available on the card; or the bid amount specified by the user; or the amount charged to the card if the bid is

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successful) and which provides guaranteed payment if the conditional purchase offer is accepted (see text in FIG. 3 "Your credit card number is required to guarantee your bid"). The purchase offer is compared with seller inventory (steps 83 in FIG. 8) and pricing information (col. 8, lines 56-61 indicate product pricing. The minimum acceptable bid at step 93 in FIG. 11 is additionally an indicator of pricing ) and determines if the conditional purchase offer is acceptable (step 66 in FIG. 7--the bids are marked as successful or unsuccessful). If the offer is unacceptable (the bid at step 66 is marked as unacceptable), a rejection of the offer is transmitted to the customer (FIG. 8, steps 84-85--marked bids generate e-mail messages to the consumer indicating the result of the bid). Action is taken to deter the customer from submitting multiple purchase offers (FIG. 5, step 43, bid validation step can prevent a bid from being submitted. Alternatively, step 53 of closing an auction can deter further bidding on the closed item). The fisher reference is silent with respect to the newly amended limitations of accessing seller defined rules that define conditional purchase offer acceptance/rejection parameters; and applying the access seller defined rules to compare said condition purchase offer with seller inventory and pricing information to determine if said conditional purchase offer is acceptable. On the other hand Walker discloses the accessing seller defined rules that define conditional purchase offer acceptance/rejection parameters; and applying the access seller defined rules to compare said condition purchase offer with seller inventory and pricing information to determine if said conditional purchase offer is acceptable as showing in Fig. 10, 1010, and 1020. it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporates the Walker teaching in the Fisher system. Skilled artisan would have been motivated to make such modification to the Fisher system to

improve the process of seller information to qualify the buyer and seller information to complete the purchasing of goods.

Regarding Claim 111, the combination of Fisher in view of Walker discloses the conditional purchase offer includes an expiration date (FIG. 3, "Expiration date" Fisher).

Regarding Claims 112, and 124, the combination of Fisher in view of walker discloses the seller rules are to sell the product to highest acceptable bidder. These rules are enforced by algorithms, such as the algorithm of FIG. 11 of Fisher which ensures that the highest acceptable bid is selected.

Regarding Claims 113, and 125 the combination of Fisher in view of walker discloses the system of FIG. 1 in Fisher can be read as a computer reservation system, since a successful bid reserves the product for the user at the bid price. The airline reservation system is optionally recited as thus carries no patentable weight.

Regarding Claims 114, 115, 126 and 127, the combination of Fisher in view of walker discloses the financial instrument used for payment is a credit card with an associated credit card account. Strictly speaking, a credit card account is both a debit account and credit account. Charges result in debits from the available line of credit, while payments result in credits towards the available line of credit.

Regarding Claims 117, and 128 the combination of Fisher in view of walker discloses the payment is guaranteed (FIG. 3---"Your credit card is required to guarantee your bid", Fisher).

Regarding Claims 118, and 129 the combination of Fisher in view of walker discloses the conditional purchase offer is authenticated by the bid validator (21). Also see steps 41-47 in FIG. 5 for the operation of the bid validator, Fisher.

Regarding Claims 119, and 130, the combination of Fisher in view of walker discloses the conditional purchase offer includes acceptance of a customer credit card (FIG. 3--"Your card will not be charged unless your bid is successful", Fisher).

Regarding Claim 120, the combination of Fisher in view of walker discloses the bid validation process of FIG. 5 can reject (step 44) any particular bid at any particular price. Additionally, the closing of the auction at step (53) in FIG. 6 will prevent all further bids on that item, regardless of price Fisher.

Regarding Claim 121, the combination of Fisher in view of walker discloses in Fisher FIG. 5, the steps of opening items for sale (step 52) and closing auctions (step 53) have the effect of limiting bids to the time in which an item is available for auction.

Claims 116, 122 and 131 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fisher et al. (U.S. Patent 5,835,896) in view of Walker et al. (Walker hereinafter) US Patent No. 5,794,207 filed Sep. 4, 1996 and further in view of Official Notice.

Claim 116: Examiner takes Official Notice that it is well known in the art to pre-authorize a purchase made on a credit card. For example, this is typically done by hotels which obtain a pre-authorized approval amount from the available credit in the credit card account to cover the cost of a hotel stay. It would have been obvious to one of ordinary skill in the art to modify Fisher et al. to pre-authorize payment amounts before payments are made so as to assure guaranteed payment to the seller as is well known in the art.

Claims 122 and 131: All of the goods and services listed alternatively in claims 122 and 131 are well known in the art. Modifying Fisher so as to include such goods as services for sale

would have been obvious to one of ordinary Skill in the art as a choice of well known products or services.

### ***Response to Arguments***

Applicant's arguments with respect to claims 110-116, 118-127, 129-131 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

### ***Point of Contact***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sana Al-Hashemi whose telephone number is 571-272-4013. The examiner can normally be reached on 8Am-4:30Pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Rones can be reached on 571-272-4085. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Sana Al-Hashemi/  
Primary Examiner, Art Unit 2164